

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5354 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISHWRBHAI ARJUNBHAI SODHA

Versus

S C PANDYA, DIVISIONAL TRAFFIC OFFICER & OTHERS

Appearance:

MR VJ DESAI for the Petitioner

MR SM MAZGAONKAR for the Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/96

ORAL JUDGEMENT

1. The petitioner, a driver of Gujarat State Road Transport Corporation, filed this Special Civil Application before this court challenging the order passed by the respondent no.1 and confirmed by respondents no.2 and 3 in appeals under which he was ordered to be dismissed from the services after holding a departmental inquiry.

2. The petitioner was working as a driver at Kambhat Depot on 15th September, 1981. While taking the bus towards double-deck for taking water for the bus, he caused an accident in which one passenger Madhuvandas P. Patel was hit and he died. This accident was caused as a result of negligent driving on the part of the petitioner. For this negligent driving of the petitioner, a criminal case has also been filed against him for the offence under sec. 279-304 A of Indian Penal Code. The petitioner has been given the chargesheet vide memo dated 1-10-1981 for departmental inquiry. He replied to the said chargesheet on 9-10-1981 and denied the charges. The Inquiry officer has found him to be guilty of the charges and under the order dated 16-2-1982, the disciplinary authority has dismissed him from the services. The petitioner preferred an appeal to the respondent no.2 against the aforesaid order, which has been dismissed. Then he preferred a second appeal to the respondent no.3, but the said appeal has also been dismissed on 30-3-1984. Hence, this Special Civil Application.

3. The learned counsel for the petitioner contended that the charge in the criminal case and charge in the departmental inquiry was one and the same, and in the criminal case, the petitioner has been acquitted. When the petitioner has been acquitted in the criminal case, then in the departmental proceedings he could not be penalised for the same alleged act of negligence in driving. It has next been contended that the petitioner has been acquitted after the dismissal order has been made by the disciplinary authority and his appeal was pending before the Appellate Board. He brought this fact to the notice of the Appellate Board and a copy of decision has also been filed, but the same has not been considered. Lastly, the counsel for the petitioner contended that in the facts and circumstances of the present case, atleast the penalty of dismissal which has been given to the petitioner is not proportionate to his guilt.

4. On the other hand, the counsel for the respondents contended that the Corporation has all the powers to proceed simultaneously against the petitioner for the alleged misconduct and its criminal liability. The acquittal in the criminal court has no relevance as the standard of proof differs in the departmental inquiry and the criminal case. The learned counsel for the respondent contended that whatever material has been produced before the Appellate authority, the same has been considered.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is a case where the petitioner has been acquitted in the criminal case for the offence under sec. 279-304 A of I.P.C. and for which he was chargesheeted. It is true that against the petitioner the Corporation could have proceeded simultaneously for the same act of misconduct and the criminal liability, but after acquittal in the criminal case, the appellate authority should have considered the judgment of criminal court, what weight has to be given to it and what relevance it has in the matter, has to be gone into on merits. The learned counsel for the petitioner is correct to state that the appellate authority has not considered the judgment of the criminal court. The document has been filed by the petitioner before the appellate authority and non-consideration of the same is certainly an error apparent on the face of the order. This document i.e. the judgment of the acquittal of the petitioner in the criminal case has come in existence only after the departmental inquiry has been completed and order of dismissal has been made. This document could have been filed only at the appellate stage which has been done in the present case, but such a material document has not been referred and considered.

6. The net result of the aforesaid discussion is that the petition deserves to be allowed. The order of appellate authority dated 30-3-1984 is set aside and the matter is remanded back to the Appellate Board for deciding the appeal afresh of the petitioner after considering the judgment given in the criminal case in which he has been acquitted. The appellate authority will decide the appeal in accordance with law and it shall be open to the petitioner to raise all the grounds which are available to him. It is expected of the Appellate Board to decide the appeal of the petitioner as early as possible say within a period of three months from the date of receipt of certified copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-